

28

No. 353

FILED  
AUG 21 1945

CHARLES ELMORE DROPLEY  
CLERK

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1945

---

THOMAS R. PURMAN,

*Plaintiff*

vs.

T. S. FITCH and JANET REED FITCH, his wife,  
and JOHN D. JOHNSTON and CLARA L. JOHN-  
STON, his wife

---

PETITION OF THOMAS R. PURMAN, PLAINTIFF,  
FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF PENNSYLVANIA AND  
BRIEF IN SUPPORT THEREOF

---

THOMAS R. PURMAN,  
*In Propria Persona.*

41 S. College Street,  
Washington, Pa.

## TABLE OF CONTENTS

	PAGE
Petition of Thomas R. Purman, Plaintiff, for Writ of Certiorari to the Supreme Court of Pennsylvania and Brief in Sup- port Thereof .....	1
<b>BRIEF:</b>	
I. Statement of the Case .....	2
II. Reasons Relied Upon for Jurisdiction .....	3
III. Questions To Be Determined .....	4
IV. Reasons Relied Upon for Review .....	5
V. Reasons Relied Upon for Reversal .....	6
VI. Argument .....	7

## TABLE OF CASES

Purman vs. Fitch, 352 Pa. 134 .....	2
Purman vs. Johnston, 343 Pa. 645 .....	2
Seargent vs. Ingersoll, 15 Pa. 343, 348 .....	6
39 Cye. 30, 31 .....	6
Vaux vs. Parks, 7 Watts & S., 19, 25 .....	6
Restatement of the Law of Trusts, Sec. 181, Comment A .....	6
39 Cye. 387, N. 85, 448, 525, 552 .....	6
99 U. S. 103 .....	7
Cook vs. Mosier, 108 Ohio 30 .....	7

*Petition for Writ of Certiorari*IN THE  
SUPREME COURT OF THE UNITED STATES

No.

Term, 1945

*Thomas R. Purman,*  
*Plaintiff**vs.**T. S. Fitch and Janet Reed Fitch, his wife, and Clara L.  
Johnston and John D. Johnston, her husband***PETITION OF THOMAS R. PURMAN, PLAINTIFF, FOR  
WRIT OF CERTIORARI TO THE SUPREME COURT OF  
PENNSYLVANIA AND BRIEF IN SUPPORT THEREOF***To the Honorable Harlan S. Stone, Chief Justice of The  
United States and the Associate Justices of The Su-  
preme Court of the United States:*

The petition of your Plaintiff Thomas R. Purman, a citizen of Pennsylvania, respectfully shows:

Your petitioner seeks review of a final decree of the Supreme Court of Pennsylvania in the above entitled case, 352 Pa. 134, affirming a decree of the Court of Common Pleas of Washington County, Pennsylvania, No. 4245 in equity, holding that the trustee of a resulting trust commits no breach of trust by leasing the property after a suit has been commenced against him to declare the trust and that there is no action against the lessee who had notice of the suit before he took the lease, the beneficiary being ignorant of the lease.

## I.

STATEMENT OF THE CASE

---

On March 20, 1935, plaintiff filed the suit to declare the trust (*Purman vs. Johnston*, 343 Pa. 645). On June 1, 1935, the defendant Johnston, without plaintiff's knowledge, leased the property to one, Fitch, who had actual knowledge of the suit, believed Johnston to be a trustee, paid the money to Johnston for Johnston's own use, and caused to be inserted in the lease a clause whereby Johnston was to indemnify him in event the trust was declared (*Purman vs. Fitch*, 352 Pa. 134, pages 221a, 35a, 220a, 230a, 35a). On November 20, 1935, defendant Johnston sold the property to Fitch (235a). This agreement of sale also contained the indemnity clause found in the lease. The trust was declared below Feb. 1939, No. 3750 in Equity, Washington County, Pennsylvania, affirmed Nov. 21, 1941, 343 Pa. 645. Plaintiff, on Sept. 14, 1942, filed suit against Fitch to No. 4245 in Equity, Washington County, Pennsylvania for rents and profits. Held, no breach of trust by Johnston and no recourse to Fitch, affirmed May 21, 1945, 352 Pa. 134.

*Reasons Relied Upon for Jurisdiction*

## II.

REASONS RELIED UPON FOR JURISDICTION

---

1. The decision is in conflict with the doctrine of *lis pendens*. The Supreme Court of the United States has exclusive jurisdiction to resolve conflict of laws.
2. The decision is in conflict with the Law of Trusts. The Supreme Court of the United States has exclusive jurisdiction to resolve conflict of laws.
3. The decision deprives plaintiff of his property without due process of law. The Supreme Court of the United States has exclusive jurisdiction to restore rights under due process clause.

## III.

QUESTIONS TO BE DETERMINED

---

1. Can a Dry Trustee lease the property without consent?
2. Is the lessee of a Dry Trustee, *pendente lite*, with notice of the Trust, liable for rents and profits?
3. Is the owner's cost the measure of damages to one who takes Trust property with notice of the Trust?

*Reasons Relied Upon for Review*

## IV.

REASONS RELIED UPON FOR REVIEW

---

1. The decision is in conflict with fundamental law as applied in all other jurisdictions and always previously applied in this jurisdiction in that it rejects the doctrine of *lis pendens* and creates in a Dry Trustee the power to manage the property.
2. Conflict of fundamental law is contrary to broad public policy.
3. The decision creates a legal situation whereby a malafide Trustee can lease the property to a third party who has notice of the Trust, at whatever is agreed upon between themselves, even though the purpose of the one to appropriate the money to himself is known to the other and the bargain is controlled by collusion.
4. A legal situation capable of collusion without recourse to one of the tortfeasors is contrary to broad public policy.
5. The decision makes possible for joint tortfeasors to fix the liability of the one at the sum named in the writing even though that was the purpose of the writing and the sum named is not the real sum and bears no relation to the owner's cost.
6. A legal situation giving bona fide status to tortious dealings and immunity to one of the tortfeasors is contrary to broad public policy.

## V.

REASONS RELIED UPON FOR REVERSAL

---

1. If the doctrine of *lis pendens* as laid down in Pennsylvania as to Resulting Trusts by the case of *Sargent vs. Ingersoll*, 15 Pa. 343, 348, had been applied the lessee, Fitch, would have been liable to plaintiff.
2. If the Law of Resulting Trusts as laid down in 39 Cyc. 30, 31, and the Pennsylvania Case of *Vaux vs. Parks*, 7 Watts and S., 19, 25, had been applied to the effect that a Dry Trustee has no power to deal with the property without sanction, and the holding in the present case that the Trustee of a Resulting Trust must convey upon demand, had been adhered to and not later contradicted by the holding that the Trustee can lease at will there would have been a breach of trust and plaintiff would have had recourse to the lessee. If the law as laid down by Restatement of the Law of Trusts, Sec. 181, comment A as to the duty of the Trustee to hold title and to convey had been applied to all the facts, instead of to part of the facts, plaintiff would have recovered. If the law as laid down in 39 Cyc. 387, N. 85, 448, 525, 552, had been applied the Trust would have been breached, both as to the lease and as to the sale and plaintiff would have recovered.

*Argument*

## VI.

ARGUMENT

---

1. Disregard of established law by an Appellate Court is a matter of grave public concern. *Lis pendens* has been established law since the 12th Ordinance of Bacon. It has been consistently applied by this Court, notably in 99 U. S. 103. As said in *Cook vs. Mosier*, 108 Ohio 30, it is the law of the land. Likewise, the law of passive trusts has been law since time immemorial. It is an ordinary, every day occurrence for individuals and corporations to purchase real estate through an agent and take title in the agent's name, thereby setting up a passive trust. Under the decision in this case such a trustee can, with the aid of another, employ the trust property to their own use, with no recourse to the third party. It always has been the law that the trustee of a Dry Trust had no power to deal with the property. The situation created by the Supreme Court of Pennsylvania is against broad public policy and the writ should accordingly issue.

2. Great injustice has been done the plaintiff. Even where a tenant is confronted with a suit against his landlord's title it is his duty to interplead but this tenant did not enter until after the suit had been brought and had full knowledge of it. Also this tenant not only did not enter until after the suit was brought but purposely did not inquire of plaintiff (225a), although he knew that plaintiff was ignorant (221a) and knew, and intended, that the trustee use the money for his own benefit (230a).

*Argument*

3. The rejection of settled law by the Supreme Court of Pennsylvania has deprived plaintiff of his rights.

4. Wherefore, your petitioner prays that your Honorable Court will direct a writ of Certiorari to the Supreme Court of Pennsylvania commanding that court to send up the Record and all things pertaining thereto in this case and that your Honorable Court will review and reverse said decree and grant plaintiff the relief to which he is entitled by the justice of the case.

Respectfully submitted,  
THOMAS R. PURMAN,  
*In Propria Persona.*





OCT 12 1945

CHARLES ELMORE GROPLEY  
CLERK

IN THE

**Supreme Court of the United States****OCTOBER TERM, 1945****NO. 353.**

THOMAS R. PURMAN, Petitioner,

v.

T. S. FITCH and JANET REED FITCH, His wife,  
 Respondents, and  
 JOHN D. JOHNSTON and CLARA L. JOHNSTON,  
 His Wife.

---

**BRIEF FOR RESPONDENTS T. S. FITCH AND  
 JANET REED FITCH, OPPOSING PETITION  
 FOR CERTIORARI.**


---

JOHN H. DAVIDSON,  
 Washington, Pennsylvania,

*Attorney for T. S. Fitch and Janet  
 Reed Fitch, Respondents.*

## **INDEX.**

---

	PAGE
Reference to Official Reports of Opinions in the Courts Below .....	1
Jurisdiction of This Court .....	2
Counter-Statement of the Case.....	2
Argument	
I. Writ Not Justified by Conflict of Laws....	4
II. No Federal Question .....	5
Conclusion .....	6

## **TABLE OF AUTHORITIES.**

Heffernan v. Heffernan, 344 Pa. 137; 23 A. 2d 424..	6
Helvering v. Hallock, 309 U.S. 106; 84 L. Ed. 604...	5
Hughes v. Pennsylvania Railroad Co., 191 U.S. 477; 48 L. Ed. 268 .....	4

IN THE  
**Supreme Court of the United States**

---

**OCTOBER TERM, 1945**

---

**NO. 353.**

---

**THOMAS R. PURMAN, Petitioner,**

**v.**

**T. S. FITCH and JANET REED FITCH, His wife,  
Respondents, and  
JOHN D. JOHNSTON and CLARA L. JOHNSTON,  
His Wife.**

---

**BRIEF FOR RESPONDENTS T. S. FITCH AND  
JANET REED FITCH, OPPOSING PETITION  
FOR CERTIORARI.**

---

**Reference to Official Reports of Opinions Delivered in  
the Courts Below.**

In *Purman v. Fitch, et al.*, No. 244 In the Court of Common Pleas of Washington County, Pennsylvania, Sitting in Equity, the Chancellor filed an Adjudication (May 22, 1944), including Statement of the Pleadings, Findings of Facts, Discussion and Decree Nisi (printed at 249 a through 265 a).

In *Purman v. Fitch, et al.*, 24 Washington County Reports 53, (September 18, 1944; printed also at 292 a

through 301 a) the Court *en banc* filed an Opinion and made a Final Decree, dismissing plaintiff's bill in so far as it relates to Janet Reed Fitch and T. S. Fitch, and retaining it as to Clara L. Johnston and John D. Johnston for an accounting.

In *Purman, Appellant, v. Fitch, et al.*, 352 Pa. 134 (April 12, 1945—reargument refused May 21, 1945), the Supreme Court of Pennsylvania affirmed the decree of the Court below.

#### **Jurisdiction of This Court.**

It is believed that this Court has no jurisdiction to grant a review of the decision of the Supreme Court of Pennsylvania upon Writ of Certiorari for reasons which will appear under Counter-Statement of the Case and Argument. Respondents are unable to identify any specification of assigned errors intended to be urged other than the rather broad proposition that by affirmance of the Decree dismissing his bill, the Supreme Court of Pennsylvania has disregarded what petitioner asserts is established law. The parties are all residents of Pennsylvania and the subject matter is located therein. There is no statute nor treaty involved at any point in the proceedings.

#### **Counter-Statement of the Case.**

Petitioner's Statement of the Case in conjunction with the other material in his brief is likely to be misleading because of the legal implications of such phrases as "Dry Trustee", "malafide Trustee", "appropriate the money", "collusion", "tortious dealings", and the like. The Chancellor did not find any of these things, after

hearing petitioner's evidence, and the Court *en banc* dismissed petitioner's exceptions filed to the Chancellor's findings, his failures to make findings and his conclusions. The Supreme Court of Pennsylvania affirmed the decree of the Court below.

The plaintiff's statement in his Statement of the Case that defendant Johnston leased the premises, subject of the suit, to one of the respondents without knowledge of the petitioner leaves the false impression that he never knew of it. The Opinion of the Supreme Court of Pennsylvania affirming the decree of the Court below says that Purman learned of the Fitches' tenancy soon after they entered in 1935, but neither asked for possession nor demanded rental from the Fitches.

The Statement of the Case also is misleading in that it says that defendant Johnston sold the property to Fitch and refers this Court, not to the statement of the Court on the subject but to an exhibit admitted in evidence. The Opinion of the Court *en banc* justifies no statement that Johnston sold the property to Fitch. The Court *en banc* held (297 a) "It amounted to an offer to buy and an offer to sell if and when during the term of the agreement a good title could be conveyed. A like proposition was made to the plaintiff. However, no sale took place under either proposition."

**Argument.****I. THE WRIT OF CERTIORARI IS NOT JUSTIFIED BY ANY CONFLICT OF LAWS.**

(a) As his first reason for urging that the Writ of Certiorari be granted, petitioner argues that the decision is in conflict with the doctrine of *lis pendens*. He fails to take into account that the Courts of Pennsylvania decide when and how *lis pendens* applies to his case. Upon this point the Supreme Court of Pennsylvania said:

"This contention is based on the false assumption that the outcome of that litigation (*Purman v. Johnston*) would make it mandatory on the Fitches to pay all rent to appellant. The raising of a resulting trust merely entitled him to have the property transferred *on demand*: see Opinion in 343 Pa. 645, 649, and cases there cited. Appellant has never made such demand and the Johnstons still hold title in trust for *Purman*": 353 Pa. 134, 136.

The highest court of the state may administer the common law according to its own understanding and interpretation, without liability to a review in The United States Supreme Court, unless some creation of the federal power has been asserted and denied: *Hughes v. Pennsylvania Railroad Co.*, 191 U.S. 477; 48 L. Ed. 268 (1903). Similarly, in the construction placed upon a statute this Court is bound by a construction placed upon the statute by the state courts: *Schuylkill Trust Company v. Commonwealth of Pennsylvania*, 302 U.S. 506; 82 L. Ed. 392.

(b) The case of *Vaux v. Parks*, 7 Watts and Sargent, 19, cited in petitioner's brief was a case of a testa-

mentary trust and is readily distinguished as such. The case of *Seargent v. Ingersoll*, 15 Pa. 343, cited by petitioner is readily distinguished from this case for in it there was a breach of trust, whereas, in this case the Opinion of which review is sought says, at page 137, "Appellant's argument that the Johnstons committed a breach of trust in leasing the property while the previous bill was pending is without merit. \* \* \*"

(c) Even *stare decisis* is not an inflexible rule: *Helvering v. Hallock*, 309 U.S. 106 at 119; 84 L. Ed. 604, at 612.

## **II. NO FEDERAL QUESTION.**

The respondents are unable to perceive any federal question in the case. Certainly none is disclosed by the record and it is nowhere made to appear that any federal right was asserted or denied up to the presentation of the Petition for a Writ of Certiorari. At this late date the petitioner makes a bare statement that he has been deprived of his property without due process of law. The petitioner has been deprived of no property without due process. He is nothing more nor less than any other unsuccessful litigant who has failed to successfully assert in state courts remedies claimed under state laws. It is submitted as an established proposition that the Federal District Courts, if they had jurisdiction, would have applied the laws of Pennsylvania to this case and that a conflict in the decisions of the Federal Courts administering the laws of the several states would not present a federal question which would justify the grant of a Writ of Certiorari.

By his reference to places in the record which are the testimony of the parties (see page 7 of the petition)

the petitioner seems to be asking this Court to review the findings of the Chancellor who sat and heard the case. The appellant's difficulty is that the Court found the essential facts against him and the record supports the finding: *Purman v. Johnston*, 343 Pa. 645, 22 A. 2nd 722. Where there is evidence to support the findings, affirmed by the Court *en banc*, they will be accepted on appeal: *Heffernan v. Heffernan, et al.*, 344 Pa. 137; 23 A. 2nd, 424, 425.

#### CONCLUSION.

As the foregoing is intended to show, the respondents believe and contend:

1. That there is no conflict of law.
2. That there is no federal question involved.
3. That there is no decision of a Circuit Court of Appeals in conflict with applicable local decisions.

Respectfully submitted,

JOHN H. DAVIDSON,

*Attorney for T. S. Fitch and Janet Reed Fitch, his wife, Respondents.*

---





NOV 16 1945

CHARLES ELMORE CHAPLEY  
CLERK

(30)

IN THE  
**Supreme Court of the United States**

---

No. 353 OCTOBER TERM, 1945

---

THOMAS R. PURMAN,

*Plaintiff*

vs.

T. S. FITCH and JANET REED FITCH, his wife,  
and JOHN D. JOHNSTON and CLARA L. JOHN-  
STON, his wife

---

PETITION FOR REHEARING OF PETITION  
FOR WRIT OF CERTIORARI TO THE SUPREME  
COURT OF PENNSYLVANIA AND BRIEF IN  
SUPPORT THEREOF

---

THOMAS R. PURMAN,  
*In Propria Persona.*

41 S. College Street,  
Washington, Pa.

## INDEX

	<b>PAGE</b>
<b>Petition for Rehearing</b> .....	<b>1</b>
<b>History of the Litigation</b> .....	<b>2</b>
<b>Argument</b> .....	<b>5</b>
<b>Lis pendens</b> .....	<b>7</b>
<b>Resulting trust</b> .....	<b>8</b>
<b>Conflict of law</b> .....	<b>9</b>
 <b>CASES CITED:</b>	
<b>Purman vs. Fitch, et al.</b> , 352 Pa. 134 .....	<b>8</b>
<b>Sergeant vs. Ingersoll</b> , 15 Pa. 343 .....	<b>8</b>

*Petition for Rehearing.*

IN THE SUPREME COURT OF THE UNITED STATES

---

No. 353 October Term, 1945.

---

*Thomas R. Purman*

*vs.*

*T. S. Fitch and Janet Reed Fitch, his wife, and Clara L. Johnston and John D. Johnston, her husband.*

---

**PETITION FOR RE-HEARING**

---

*To the Honorable Harlan S. Stone, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

Your petitioner, Thomas R. Purman, is a citizen of the State of Pennsylvania, and respectfully petitions your Honorable Court for a Re-hearing of the Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania in the above entitled case, on the ground that his *constitutional rights* have been grossly violated by the opinion complained of, and in support thereof presents the following Argument, preceded by a brief history of the matter.

## HISTORY OF THE LITIGATION

---

1. In 1930 this petitioner bought the property in question at a cost of some Twenty-five Thousand (\$25,000.00) Dollars, paid the purchase price, and took title in the name of one Johnston, an employee, and wife, with whom he intended to make his future home (246a, 247a).

The Johnstons subsequently, without the petitioner's knowledge, mortgaged the premises (295a). Upon learning of the breach the petitioner, on March 23, 1935, brought suit for title, decided in petitioner's favor below, affirmed by the Supreme Court of Pennsylvania, November 21st, 1941, 343 Pa. 645 (251a).

2. At the time that petitioner brought suit for title, to wit: March 23, 1935, the trustees, Johnstons, were dealing with one, Fitch, to sell the property to Fitch. Petitioner's suit against the Johnstons put a stop to these dealings, the existence of which was unknown to petitioner until some months thereafter (221a).

3. Petitioner's suit against the Johnstons was tried in June, 1935, at which time petitioner knew nothing about Fitch, and could not possibly make him a party to the suit.

4. On July 1st, 1935, some days after the trial of petitioner's suit against the Johnstons had been completed, T. S. Fitch and Janet Reed Fitch, his wife, entered the premises, without petitioner's knowledge, as a tenant of the Johnstons under a lease executed between the Johnstons and T. S. Fitch, under date of June 1st, 1935. Neither this

*History of the Litigation*

lease, nor the presence of the Fitch's, was known to the petitioner and no inquiry was made of petitioner by the Fitch's or either of them.

5. In November, 1935, the Johnstons consummated the sale of the property to Fitch by an agreement of sale specifically delivering possession of the property to Fitch as a purchaser, Fitch being already in possession under the lease previously executed. Petitioner had no knowledge of this sale at the time, and did not obtain knowledge of it until some six years later after the Supreme Court of Pennsylvania had affirmed the decision of the Trial Court, declaring the Johnstons to be petitioner's trustees.

6. In both the lease and the agreement of sale Fitch inserted a clause taking notice of the existence of petitioner's suit against the Johnstons, and binding the Johnstons to indemnify him in event petitioner prevailed in his suit against the Johnstons.

7. Defendant Fitch knew that in dealing for the property he was dealing with a trustee, and that the trustee was using the money for himself, and that the owner of the property, your petitioner, had no knowledge of the transactions.

8. Immediately after your petitioner had been informed of the decision of the Supreme Court of Pennsylvania in petitioner's favor (343 Pa. 645), petitioner made demand upon Fitch for rents and profits. Upon this demand being ignored, petitioner, in September, 1942, brought suit against the Fitch's, husband and wife, for rents and profits.

9. The Trial Court in petitioner's suit against the Fitch's, decided December 18, 1944, held that although the

*History of the Litigation*

Johnstons were hostile litigants to petitioner, claiming petitioner's property to be their own, they committed no breach of trust in leasing the property to the Fitch's, and that petitioner had no right of action against the Fitchs. The sale made by the Johnstons to Fitch was regarded as a mere executory contract.

10. Your petitioner appealed to the Supreme Court of Pennsylvania, December, 1944. This appeal was decided against your petitioner, Reargument refused May 21st, 1945, the Court holding that the trustee of a resulting trust has authority to deal with the property without the knowledge or consent of the beneficiary.

## ARGUMENT

---

1. The actions of the Chancellor in your petitioner's suit against Fitch are strange and inexplicable. The Chancellor in this suit was the same Chancellor that found for your petitioner in your petitioner's suit against the Johnstons. That suit, while premised on long established law, that where one person pays the purchase money and takes title in the name of another, a trust results in favor of him who paid the purchase money. In addition to that situation in this case, however, there were emphatically present the elements of an express trust the terms of which were stated in a telegram from the Johnstons to your petitioner, preceding petitioner's purchase of the property, and following your petitioner's direction to the Johnstons to locate a suitable property and notify your petitioner, who would purchase it (92a). The Chancellor, after petitioner's case against the Fitches had been opened, but before testimony had been more than slightly proceeded with, referred to this telegram by stating from the Bench that your petitioner had made strong use of this telegram in petitioner's suit against the Johnstons, and that now he, the Chancellor, in petitioner's suit against the Fitches, was going to hold your petitioner to something (92a). How can a Chancellor in equity state from the bench the intent of his decree before he hears the case? What vague idea existed in the Chancellor's mind as to his future disregard, distortion of, or suppression of facts which his knowledge of the previous case caused him to know would

*Argument*

be produced against defendant, Fitch? Such a statement by a Chancellor is alone indicative of a purpose to deprive a litigant of his constitutional right of due process of law, and taken together with further statements and action of the Chancellor, later referred to, are beyond the bounds of understanding. The telegram referred to by the Chancellor, and quoted by the Supreme Court of Pennsylvania in the case against the Johnstons (343 Pa. 645) reads as follows: "Have found the home, price high, will you come and look it over? Ideal for all of us, kitties, too." It appears in the record of petitioner's case against the Johnstons that the word "kitties" in the telegram refers to your petitioner's pet kittens.

The Chancellor goes on to state that the whole purpose of the acquisition of the property by your petitioner was that it be "a home for all of them," and that, "he (your petitioner) now complains that they or their tenants lived in it (92a). If by the statement of the Chancellor that he intended "to hold your petitioner to something" the Chancellor meant that the telegram stated the terms of an express trust, and that the Johnstons by those terms were to have a home therein, that it was his intention to hold your petitioner to the proposition that they have a home therein, he finds himself confronted with the fact that your petitioner was to also have a home therein. How could your petitioner have a home in the property after the Johnstons had transferred its possession to another? On the basis that the petitioner was to have a home in the property, the Johnstons violated the trust by removing from the property and transferring its possession to another. Your petitioner, at any time under the construction of the telegram, as it

*Argument*

expressed trust, could move in with the Johnstons. He could not move in with any tenant of the Johnstons, and the Chancellor's statement that your petitioner complains because the Johnstons' tenants occupied the property is indeed unexplainable. The telegram *does* state the terms of an *expressed* trust, the terms of which would require the Johnstons to remain in possession. They removed of their own free will, and in so doing violated the trust. They knowingly and intentionally and with the knowledge, intent and purpose of Fitch, used the money obtained from Fitch *for themselves*, and in so doing converted the trust to their own use. The conversion was a violation of trust, knowing themselves to be trustees, their assertion of ownership in your petitioner's suit against them, was a violation of trust. For the Trial Court to hold and for the Appellate Court to affirm that there was no violation of trust is a deprivation of your petitioner of his property without *due process of law and his constitutional rights*. Taken together with the attitude of the Chancellor as previously described, it becomes a gross deprivation of your petitioner of his constitutional rights.

---

**LIS PENDENS**

---

While in the presence of actual notice, the matter of *lis pendens* is subordinate. The disregard of this ancient doctrine by the Trial Court and by the Appellate Court in your petitioner's case against Fitch is gross deprivation of your petitioner's *constitutional right to due process of law*. Especially in Pennsylvania the doctrine is well settled and

*Argument*

concisely stated in the case of *Sergeant vs. Ingersoll*, 15 Pa. 343, where the first paragraph of the syllabus says:

“Whenever a purchaser has notice that an estate is affected by other interests than those of the vendor of the legal title he is bound to inquire into the extent and *terms* of those interests.”

In petitioner's case against Fitch, Fitch not only did not inquire but purposely avoided inquiry, because *knowing* that he was dealing with a trustee, he felt he dared not learn the terms of the trust, but whether he avoided learning them or not, he is bound by them. For the Pennsylvania Courts, Trial and Appellate, to ignore the *lis pendens* is again depriving your petitioner of his *constitutional rights of due process of law*.

---

### RESULTING TRUST

---

Resulting trust is, as pointed out by the first paragraph of the syllabus of *Purman vs. Fitch, et al.*, 352 Pa. 134, a trust that requires the trustee to convey upon demand. How can a trustee who has encumbered the property with a lease convey upon demand?

It always has been the law that the trustee of a dry trust could not deal with the property without the consent of the *beneficiary*. The trial court in your petitioner's case against Fitch has held that the trustee not only could do so, but was under a duty to do so, and this holding is affirmed by the Appellate Court, citing “Restatement of the

*Argument*

Law of Trust", but citing only that part of the text referring to an expressed trust, and totally disregarding the next sentence of the text, *which holds the contrary*. Restatement —Law of Trust, Section 181, Comment A. Such disregard and distortion of law against your petitioner is gross deprivation of your petitioner of his *constitutional rights*.

---

**CONFLICT OF LAW**

---

The action of the Appellate Court, as well as the Trial Court, in both the doctrine of *lis pendens* and the law of trust, is in direct conflict with all decisions of all other states, in conflict with all previous decisions of the Appellate Courts of the State of Pennsylvania, as well as in conflict with all United States Courts' decisions, which uniformly hold that a purchaser *lis pendens* of trust property with notice of the trust, in violation of the trust, is liable to the beneficiary for rents and profits.

The holding of the Trial Court, affirmed by the Appellate Court, that a trustee can claim ownership of the property for himself, and yet at the same time be a faithful trustee, is repugnant to all law and equity.

Wherefore, your petitioner prays that your Honorable Court will grant a rehearing of your petitioner's Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania, and that the said Writ will issue.

THOMAS R. PURMAN,  
*In Propria Persona.*

November 9th, 1945.